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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 496

AMALGAMATED TRANSIT UNION, AFL-CIO, *Appellant*,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Appellees*,

and

AMERICAN BUSLINES, INC., AND NATIONAL ASSOCIATION OF MOTOR BUS OWNERS, *Intervenor-Appellees*.

On Appeal from the United States District Court for the District of Columbia

MOTION TO AFFIRM

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MOTION TO AFFIRM

Pursuant to Rule 16, paragraph 1(c) of the Revised Rules of this Court, intervenor-appellee American Buslines, Inc., moves that the judgment of the United States District Court for the District of Columbia (entered on May 4, 1966), be affirmed.

DISTRICT COURT PROCEEDING BELOW

Involved at present is a direct appeal from the final judgment of a specially-constituted three-judge district court. The opinion of that court below is found at 253 F. Supp. 481.

COMMISSION DECISIONS BELOW

The pertinent opinions of the Interstate Commerce Commission are found at 80 M.C.C. 681, 90 M.C.C. 173 and 97 M.C.C. 426.

PERTINENT STATUTORY PROVISIONS

Section 5(2) of the Interstate Commerce Act is involved (49 U.S.C.A. Section 5[2]), and particularly sub-sections (b), (c) and (f) thereof.

BACKGROUND OF THE CASE

American Buslines, Inc. (hereinafter referred to as American Buslines), is a corporation organized and existing under the laws of the state of Delaware, with its principal office at Lincoln, Neb. American Buslines holds authority from the Interstate Commerce Commission to operate as a motor common carrier of passengers and express over routes extending from coast-to-coast, between New York, N.Y., and Los Angeles and San Francisco, Calif.

Amalgamated Association of Street, Electric Railway and Motor Coach Employese of America, AFL-CIO (hereinafter referred to as Amalgamated), is a labor organization acting as collective bargaining representative for certain American Busline employees.

On November 18, 1958, Midwest Buslines, Inc. of Little Rock, Ark. (hereinafter referred to as Midwest)

and American Buslines filed applications before the Interstate Commerce Commission, under Section 5 of the Interstate Commerce Act, in which American Buslines sought approval for sale of its routes between Kansas City, Mo. and Memphis, Tenn. to Midwest. Additionally, by applications filed on November 19, 1958, Commission approval was sought for purchase by Continental Tennessee Lines, Inc. of Alexandria, La. (hereinafter referred to as Continental), of another portion of the routes of American Buslines between Memphis, Tenn. and Chattanooga, Tenn.

Both applications before the Commission (*Midwest Buslines, Inc.—Purchase* [*Portion*]*—American Buslines, Inc.,* Docket No. MC-F-7041; and, *Continental Tennessee Lines, Inc.—Purchase* [*Portion*]*—American Buslines, Inc.,* Docket No. MC-F-7042) were set for hearing on a consolidated record. The initial hearing before a hearing examiner of the Commission was held on February 17, 1959. At the consolidated hearing Amalgamated appeared as the only protestant, and confined its participation to cross-examination of applicants' witnesses.

The examiner in his report recommended approval of the transactions subject to a condition designed to reserve Commission jurisdiction for three years from the date of consummation with respect to such carrier employees as might be adversely affected by the transaction. After the examiner's report and recommended order was served, exceptions were filed by Amalgamated and applicants replied. Thereupon, Division 4 of the Commission, on November 12, 1959, issued its report determining that there was insufficient evidence of record to warrant imposing specific conditions dealing with particular employees, or groups of employees;

but also finding that since as a result of consummation the effect upon employees would become more apparent within a reasonable time, it would reserve jurisdiction for a period of three years to make additional findings and impose such terms and conditions with respect to employees as would be necessary and lawful. The parties consummated the transactions on December 31, 1959.

On April 11, 1960, Amalgamated petitioned the Commission requesting reopening and imposition of a formula of conditions for employee protection, including reimbursement of wages (and moving expenses) allegedly lost as a result of the transactions. To this petition the three carriers replied. Then, by order dated September 20, 1960, Division 4 granted the petition of Amalgamated to the extent of reopening the proceedings for further hearing solely for the purpose of affording the parties an opportunity to present evidence showing specifically how, and to what extent, particular employees of the carriers had been adversely affected by the transactions. The reopened proceeding was held before an examiner of the Commission on January 4-5, 1961. At that hearing the Brotherhood of Railroad Trainmen, representing employees of Midwest, intervened opposing Amalgamated's position. At that hearing a union official and two employees testified on behalf of Amalgamated. American Buslines presented exhibits showing what wages the employees would have been paid upon termination of the strike if they had chosen to accept the work made available to them by American Buslines.

On May 3, 1961, the examiner issued his report and order recommending denial of Amalgamated's petition. Following exceptions and replies, Division 3 of

the Commission issued its report and order denying Amalgamated's petition. In that report Division 3 found that any grant of the damages claimed, whether through imposition of specific conditions, or by application of a particular formula, would be contrary to the understanding of the parties in reaching a settlement of the strike. Further, the Division believed that imposition of conditions or application of a formula as suggested by Amalgamated would not be an equitable adjustment in that it would overburden American Buslines at this time. A further petition was filed by Amalgamated requesting that the entire Commission determine that the proceeding involved an issue of general transportation importance. This petition was denied by order of the entire Commission on July 23, 1962.

Amalgamated then, on January 7, 1963, filed a complaint in the United States District Court for the District of Columbia, in Civil Action No. 53-'63, seeking to set aside the report and order of the Commission. In that proceeding before the District Court the parties other than the government were the plaintiff, Amalgamated (the collective bargaining representative for American Buslines employees); American Buslines (the vendor in the proceeding before the Commission which had contracted to sell two of its bus routes); Midwest (which purchased one of these routes); and, Continental Tennessee Lines (the carrier which purchased the second route). Before the Court, Amalgamated did not protest the Commission's approval of the sale transaction itself, but complained that the Commission's refusal in its report and order after the reopened hearing, to impose conditions requiring financial protection for the carrier employees affected

by the sale was contrary to the requirements of the Interstate Commerce Act.

American Buslines, Midwest and Continental Tennessee Lines were permitted to intervene before the Court on April 3, 1963. Following oral argument, in which American Buslines participated, the Court (Washington, Circuit Judge; McGuire and Curran, District Judges), on August 2, 1963, issued its decision and entered judgment for Amalgamated, remanding the case to the Commission for further proceedings not inconsistent with the Court's opinion. The Court stated that the grounds on which the Commission relied in denying relief to Amalgamated were erroneous, and the Commission order would therefore be set aside. The Court, however, also said that it would not attempt to delineate the measure of relief, if any, to be provided the employees of American Buslines, since this matter was reserved, subject to judicial review, to the Commission for determination in the first instance. Finally, the Court said: ". . . we think that if any particular measure of relief is one which would ordinarily be granted to railroad workers similarly situated, the Commission should not deny it to the employees of America Buslines, Inc., without a reasoned explanation of its denial. . . ."

Upon remand and reconsideration, in its report issued on August 26, 1964, the Commission by a 6-to-5 vote of its 11 members modified its findings in prior reports (80 M.C.C. 681 and 90 M.C.C. 173), and directed the imposition of conditions to the purchase transactions. Basically, these conditions provided that any of the driver-employees of American Buslines who were forced to incur expenses in moving their households because of reassignment resulting from the

transactions authorized by the Commission, were to be paid a lump sum settlement by American Buslines equal approximately to the amount of those costs incurred, and that in the event of any dispute arising with respect to this protection, which dispute could not be settled by the carrier and employee within 30 days after it arose, the matter might then be referred by either party to an arbitration committee for consideration and determination. American Buslines petitioned for reconsideration, but by order of January 27, 1965, the Commission denied this petition for reconsideration without opinion.

Thereupon, American Busline filed a complaint before the United States District Court for the District of Columbia, Civil Action No. 644-'65. Also, in Civil Action No. 684-'65 Amalgamated sought to set aside and vacate the order of the Commission, since that order denied, in part the petition by Amalgamated seeking imposition of protective provisions. As a party in interest American Buslines sought permission to intervene in opposition to the relief sought by Amalgamated in Civil Action No. 684-'65; and petitioned for consolidation of Civil Action No. 684-'65 with Civil Action No. 644-'65. This intervention and consolidation was ordered by the Court on October 19, 1965. At that time a motion was also made by the Teamsters and the Interstate Commerce Commission to consolidate with the Amalgamated case and the American Buslines case a third case of the *Teamsters* v. *Interstate Commerce Commission,* Civil Action No. 894-'65. This consolidation was permitted. The action by the Teamsters involved a different purchase case under Section 5 of the Act, where Overnite Transportation Company and Rutherford Freight Lines, Inc., sought

authority for purchase by the former of the operating rights and the property of the latter. The Teamsters complained that the Commission failed to impose the protective conditions which it requested.

In essence then, Amalgamated sought to have certain protective provisions enforced; American Buslines sought to preclude establishment of any protective provisions, and the Teamsters sought to have protective provisions applied, but with regard to a different purchase transaction than that involved in the Amalgamated and American Buslines cases.

NATURE OF THE DISTRICT COURT DECISION

At 253 F. Supp. 481 (in the consolidated proceeding Civ. A. Nos. 644-'65, 684-'65 and 894-'65) the District Court viewed the issues as:

> 1. Whether the Commission policy to protect motor carrier and railroad employees differently had a rational basis and warrant in the Interstate Commerce Act.
>
> 2. Whether the protection granted the motor carrier employees in the two purchase transactions was fair and equitable.
>
> 3. Whether the Commission had statutory authority to require compulsory arbitration of disputes over the protection it affords employees as a condition to its approving a transaction under Section 5 of the Act.

The District Court found that the policy of the Commission to protect employees affected by financial transactions between motor carriers differently from employees where railroads were involved was sup-

ported by a rational basis and was authorized by the statute. The District Court also concluded that the protection given to motor carrier employees of the two proceedings before it had been fair and equitable to both employees and the involved motor carriers. Finally, the District Court held that the Commission may lawfully require compulsory arbitration of disputes over the protection granted employees as a condition to its approving a transaction under Section 5.

Therefore, the District Court dismissed the three consolidated actions, and sustained the decisions of the Commission. From this decision and judgment of the District Court, Amalgamated has taken this appeal.

ARGUMENT IN SUPPORT OF MOTION TO AFFIRM

Appellant's argument in its jurisdictional statement turns simply on the contention that different Commission protection of rail as opposed to motor carrier employees must by its very nature be unfair and inequitable. Such reasoning is self-limiting.

Involved are two entirely different types of employees, working in two vastly different industries. As noted by the District Court at page 483, displaced rail employees have been traditionally recognized as facing greater difficulties in obtaining similar new positions, than displaced motor carrier employees. Thus it is that while in the case of rail employees the statute makes it mandatory that certain protective requirements be established, on the other hand where motor carrier employees are the subject of consideration the statute leaves the matter to the Commission's discretion, and so leaves to the Commission sufficient flexibility with which to meet new problems in the com-

paratively new and more recently expanding motor carrier industry.

Furthermore, it is entirely appropriate that such flexibility remain to the Commission—an agency specifically constituted to render expert judgment in the fields of commerce and transportation. Who it may be asked is closer to the situation, and more familar with the daily problems of these two industries than the Commission? Who has more experience in problems such as these than the Commission?

Clearly, because of the nature of the motor carrier industry, the degree of transferability of motor carrier employees is considerably more than that of rail employees; and just as clearly the skills of motor carrier employees are not as technical and restricted as those of rail employees.

Further, while appellant accuses the Commission of categorically refusing to apply rail provisions in motor carrier cases, this is not what the Commission has said or done. The Commission has correctly pointed out that there is no mandatory Congressional requirement that rail provisions be equally applied in motor carier cases, and since the provisions applied in motor carrier cases have been left to Commission discretion, it will not apply rail provisions in motor carrier cases unless *compelling reasons so dictate.* This is because in the absence of such compelling reasons the Commission in its experience does not feel rail provisions are necessary in motor carrier cases, and because other different types of provisions are applied in motor carrier cases which more than amply protect those employees.

Certainly, the Commission is not arbitrary in taking this stand. In fact in some other cases the Commission

has actually suggested to the parties in motor carrier cases that voluntary consideration be given to certain of the rail provisions. The Commission has merely been given the freedom by Congress to adapt itself to the increasingly complex problems which arise in the motor carrier industry. The Commission is thus free to fit the remedy to the specific problem. Rail provisions are, after all, but one of many different types of provisions from which the Commission might choose. On what basis can appellant *demand* that in every instance rail provisions must be applied?

The Commission defends its flexibility, and rightly so. Rail provisions would be applied here if compelling reasons so dictated. The Commission has thoroughly investigated into this matter (and has re-investigated on remand), and the end result has been that no such compelling reasons have been found. The Commission, thus, applied other provisions which in its expert opinion were more fitted to the circumstances. The District Court recognized the obvious logic in this, and recognized that basically the problem was one to be balanced by the Commission. The District Court said at page 484:

> "The Commission was not required to follow the mandate of the Congress regarding the minimum protection granted railroad employees as a guide to the minimum protection for motor carrier employees. We cannot say that, under the circumstances of these cases, the motor carriers' employees involved are so similarly situated to railroad employees as to entitle them to more protection than the Commission has awarded them."
>
> * * *
>
> "Congress has prescribed no minimum statutory criteria for motor carrier employees, for the

> only standard is whether the particular protection of each case is fair and equitable in the circumstances. The majority of the Commission has granted only such protection as the employees would have been entitled to had they followed their work, and such protection seems fair and equitable to employees of American Buslines."

Simply as an example, note in the latter portion of the above quotation the reference to whether or not the displaced employees accepted work with the purchasers of their former employer. In essence, the Commission recognized that American Buslines should not be required to compensate employees for losses when the choice had been made voluntarily by the employee and the loss was not the direct result of the transaction. As Division 3 of the Commission well said in the closing paragraphs of its decision served herein on March 30, 1962:

> ". . . Section 5(2)(c) does not require that such employees be held harmless whatever the circumstances. A balance must be struck between the interests of the carrier, the employees, and the public and to insure only that the employees receive fair and equitable treatment."

Again, the balancing process—and this was just one of the many matters balanced by the Commission in determining what provisions should appropriately be applied, considering the circumstances.

Appellant speaks in terms of due process as if due process of itself required categorically the same treatment of different employees, in different industries, surrounded by different circumstances, in situations governed by different Congressional mandates. It would seem almost more reasonable to urge that due

process would be *violated* by similar treatment of individuals so differently situated.[1]

In fact, contrary to appellant's view, due process has not been violated; the subtsantial evidence rule has not been violated; nor any of the other rules with which appellant would arm itself. Administrative agency discretion was fairly exercised; the administrative balancing process was utilized to its fullest; when this proceeding before the Commission was complete a thorough-going investigation into the entire case had been accomplished; the Commission ruled fairly upon consideration of the interests of all parties—and the District Court accepted and affirmed the Commission's action as a fair and equitable treatment of the employees and the others involved.[2]

However, it is to be noted that by moving to affirm the decision of the District Court American Buslines

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[1] Lack of uniformity in statutory rights is not *per se* a denial of equal protection of the laws, especially when the lack of uniformity is reasonably related to the purposes of the statute in which it is found. See: *Smith* v. *Cahoon,* 283 U.S. 553 (1931) and *F. S. Royster Guano Co.* v. *Virginia,* 253 U.S. 412 (1920). See also: *Currin* v. *Wallace,* 306 U.S. 1, 13-14 (1939), where it was said—"There is no requirement of uniformity in connection with the commerce power. . . ."

[2] So long as substantial evidence supports Commission findings on the record viewed as a whole, it remains the exclusive province of the Commission to draw legitimate inferences of fact and to make findings and conclusions of fact and to determine the weight of the evidence. Judicial review of administrative orders is usually thought of as limited to discovery of misconceptions of law, and correction of those misconceptions. See: *Scripps Howard Radio* v. *F.C.C.,* 316 U.S. 4, 10 and *I.C.C.* v. *Union Pacific R.R. Co.,* 222 U.S. 541, 547 (1912). The judicial function is thus exhausted when a rational basis for administrative conclusions has been found. See: *Mississippi Valley Barge Line Co.* v. *U.S.,* 292 U.S. 282, 286-287 (1934).

does not concede (nor argue at this time) the right of the Commission to compel arbitration of matters which may or may not be covered by a collective bargaining agreement; since this is an issue which can only be reached in a different context of circumstances, after the parties have attempted to comply in good faith with the decision of the Commission.

In short, there is no substantial question presented by this appeal, and it is respectfully submitted that the judgment of the District Court is so clearly correct that it may properly be affirmed by this Court without further briefs and oral arguments.

Respectfully submitted,

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